IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1140 OF 2005

IN

SUIT NO. 2287 OF 1985

Tarachand Sitaram Narang & Anr. .. Appellants

versus

State Bank of India & ors. .. Respondents

...

Mr.Kevic Setalwad, Mr.Paul P.P, Ms.Deepti Nagpal i/b M/s.Nanu Hormasjee & Co. for the appellants.

Mr.Farhan Dubash i/b M/s.Mulla & Mulla for the respondent no.1.

Mr.Subodh Joshi a/w Ms.Radhika Pinjara i/b M/s.P.K. Shroff & Co. for the respondent nos.3 and 5.

CORAM : R.M. LODHA AND
D.G. KARNIK, JJ

DATED : 16th December 2005.

P.C.:

Heard Mr.Kevic Setalwad, the learned counsel for the appellants.

2. The defendant nos.3 and 5 are in appeal against the order dated 23rd November 2005 whereby the learned trial Judge refused to grant time to them for filing written statement.

3. State Bank of India (respondent no.1 and hereinafter referred to as "plaintiff") filed the suit for recovery of the amount of Rs.9,94,048.17 as per particulars of claim with further interest thereon @ 16% p.a. and realisation of securities - against M/s.Bombay Latex and Dispersions Private Limited, (defendant no.1), Ms.Lakshmi B. Narang(defendant no.2a), Tarachand Sita Ram Narang (defendant no.3) Harish Bhagwandas Narang (defendant no.4), Ramprakash Mehta (defendant no.5) and Lalit Bhagwandas Narang (defendant no.6). The case of the plaintiff was that diverse credit facilities were extended to the defendant no.1 and defendant nos.2 to 6 stood as guarantors. The defendants executed various documents and deposited the title deeds. The due amount having not been paid by the defendants, the plaintiff was constrained to file the suit on 9th August 1985. The defendant nos.3 and 5 were served immediately thereafter. For about two decades, the defendant no.3

and the defendant no.5 did not file the written statement. On 23rd November 2005 when the suit came up before the trial Judge, on behalf of the defendant nos.3 and 5, oral request was made for grant of time for filing written statement which came to be rejected on that day by the learned trial Judge giving rise to the present appeal.

4. Mr.Kevic Setalwad, the learned counsel for the appellant submitted that on 17th October, 2005, the learned Motion Judge granted time to defendant no.6 to file written statement subject to payment of costs of Rs.50,000/- and, similar opportunity ought to have been given to the defendant nos.3 and 5. He also contended that no dilatory tactics were adopted by the defendant nos.3 and 5 and that no prejudice can be said to be caused to the plaintiff if one opportunity was granted to the said defendants for filing w ritten statement. He submitted that written statement is ready and, if permitted, the same shall be filed without any delay and for that indulgence the costs may be awarded. He would submit that the time frame provided under Order VIII Rule 1 of the Code of Civil Procedure for filing written statement is directory and not mandatory and the Court has power to extend time. The learned

counsel relied upon the judgement of the Supreme Court in the case of Kailash Vs. Nanhku & Ors, (2005) 4 Supreme Court Cases 480.

5. Having given thoughtful consideration to the matter, we are unable to accept the submissions of the learned counsel for the appellants. It is an admitted fact that the defendants failed to file the written statement for almost two decades. There is hardly any justification for not filing the written statement for such a long time. The suit is usual suit by the Bank for recovery of due amount and realisation of securities. In such suit defence is hardly there. The defendant nos.3 and 5 in this situation, may not have any defence and, therfore, they marked time by not filing the written staement for such a long time. Pertinently, first, the defendant no.6 takes out the Notice of Motion for filing written statement. The notice of motion comes up for consideration before the learned Motion Judge on 17th October, 2005. That notice of motion is granted. Though the Advocate for the appellants is present, on that day no application is made on their behalf for grant of time for filing written statement. Almost a month thereafter, when the suit posted before the learned trial Judge, an oral

prayer is made on behalf of the appellants for grant of time for filing written statement. Such prayer was surely to mark time. Besides that such prayer could not have been accepted by the learned trial Judge in the light of the legal position highlighted by the Supreme Court in the case of Kailash (Supra). Summing up the legal position with regard to the power of the Court to permit the extension of time for filing of written statement beyond the time fixed under Order VIII Rule 1 of the Code of Civil Procedure and the proviso thereto, the Supreme Court ruled thus:

> (iv) The purpose of providing the time schedule for filing the written statement under Order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.
>
> (vi) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily

> the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.

6. While holding that the power of the Court in extending the time for filing the written statement beyond the time schedule provided by Order VIII Rule 1 C.P.C. is not completely taken away and that the provisions contained in Order VIII Rule 1 and the proviso appended thereto are directory, the Supreme Court emphasised that the time schedule contained in the aforesaid provision ordinarily must be followed as a rule and departure therefrom is only an exception. Extension of time, ruled the Supreme Court, may be granted by way of an exception, for the reasons assigned by the defendant in writing, though briefly.

In the present case, no written application was made by the defendant nos.3 and 5 setting out the reasons for extension of time and obviously, therefore, the prayer could not have been granted.

7. The learned counsel for the appellants submitted that now since in the memo of appeal, the reasons have been assigned, these reasons may be considered by us for extension of time. We are afraid the contention of the learned counsel for the appellants cannot be accepted. As held by the Supreme Court though the provisions contained under Order VIII Rule 1 are directory, the discretion has to be exercised by the trial Judge on fulfilment of the conditions of making out an exceptional case for grant of extension of time and there must be in writing. The grounds set out in the memo of appeal are no substitute for such reasons which are required to be stated in writing before the trial Court seeking extension of time.

8. The impugned order therefore, does not call for any interference. Dismissed in limine.

(R.M. LODHA, J)

(D.G. KARNIK, J)